XII-189 (Jail) C J.P.R./9-94

CF0000059747

Cri A 2453/98 SB(Cri)

APPEAL OF PRISONER

No हथिडिबन्दी क्रमांक 1309/58 Name दद्दुआ उर्फ धानेश

Father's name जनार्दन प्रसाद दुबे मु० सल्लापाश थनिकापुर (सरगुजा)

Residence _____ Age 26 वर्ष

Sentenced to ① 363, 366 भा.द.वि.
② 363, 366, 376 भा.द.वि. on 25, 09, 98

Under Section ① ~~२५३ - ३१२ वर्ष - २१२ वर्ष~~ by ~~प्रथम श्रेणी~~ अपर सत्र न्यायाधीश
② ~~३७६ - ३१२ वर्ष - ३१२ वर्ष~~ ~~पो० धनिकापुर जिला सरगुजा~~ धनिकापुर (म०प्र०)

It is explained to the Prisoner that if he states he wishes to be represented by a legal practitioner the appellate Court will not proceed with the case for seven days unless the legal practitioner appears earlier. If the legal practitioner does not appear within seven days he may not heard at all if the Prisoner states that he does not wish to be represented by legal practitioner the court may proceed at once with the case and will not be obliged to give a hearing to my legal practitioner who should appear.

1 Date of Application for copy of Judgement N

2 Date on which copy received N

3 Date on which Appeal sent 15-10-98

4 Whether the prisoner wishes to be represented or not. Yes

No हथिडिबन्दी क्रमांक 1309/58 Name दद्दुआ उर्फ धानेश पि० जनार्दन प्रसाद दुबे

Confined in अजिल Jail बिलासपुर (मध्य-प्रदेश)

No. _____ Dated _____ 199

Forwarded to the रजिस्ट्रार महोदय, माननीय उच्च न्यायालय जबलपुर (म०प्र०)

to gether with a copy of judgement or order passed in the case for favour of transmission to the proper Appellate court.

अष्टकोण अधिकारी,
कृते, जेल अधीक्षक,
धनिकापुर (म० प्र०)

JS 20-6-98
SUPERINTENDENT,
Superintendent Jail 15/10

Date of receipt in _____ Office _____

Date of receipt of record to accompany the Memo of Appeal to the Appellate court _____

No _____ Dated _____ 199

Forwarded to the

with in time

Date of receipt in Appellate court _____

(P. T. O.)

(96)

HIGH COURT OF CHHATTISGARH AT BILASPUR

Criminal Appeal Nos. 2453 of 1998

APPELLANT Dadua @ Thanesh

Versus

RESPONDENT State of C.G.

Shri Abhay Tiwari, counsel for the appellant.
Shri J.D.Bajpai, G.A. for the State.

J U D G M E N T

(Delivered on 25th-1-2006)

This appeal has been preferred against the judgment of conviction and order of sentence dated 25.09.98 passed by First Additional Sessions Judge, Ambikapur, District Surguja in Session Trial No. 418/93 by which appellant has been convicted under Sections 363 and 366 of the IPC and sentenced to undergo RI for seven years on each count.

2. Case of the prosecution is that Gendi Bai lodged a report on 24.08.92 in police station Ambikapur alleging that while she was in her house with her daughter Radhika at about 10 O'clock in the morning, the appellant had entered her house, caught hold of the hand of her daughter Radhika who was cutting vegetable and started dragging her. Thereupon she went to the Court to inform her husband. However as her husband was not available in the Court, she lodged a report of the incident in the police station mentioning that in the month of April also the accused had abducted her daughter and kept her in confinement for two-three days. Crime No. 584/92 was registered by the police. During investigation prosecutrix was recovered by the police from the custody of the appellant on 24.08.92 at about 12.00 noon vide Ex.P.1. The police also seized mark sheet issued by the Primary School Certificate Examination Ex.P.3 vide seizure memo of Ex.P.2. Spot map (P-5) was also prepared. Charge sheet was filed against the appellant under Sections 363 and 366 of the IPC in the Court of JMFC, Ambikapur who in turn committed the case to Sessions Judge, Ambikapur from where learned Additional Sessions

Judge received the case on transfer for trial. Learned trial Judge framed the charges under Sections 363 and 366 of the IPC and the appellant abjured the guilt. During trial the prosecutrix P.W.1, P.W.2 Kanchhei Puri, the father of the proseuctrix and P.W.3 Gendi Bai, mother of the prosecutrix and P.W.4 Ramjeevit Pandey Head Constable were examined. Statement of accused was also recorded under Section 313 of the Cr.P.C.

3. Learned Additional Sessions Judge by the impugned judgment after holding the appellant guilty under Sections 363 and 366 of the IPC sentenced him as mentioned above. Hence this appeal.

4. Learned trial Court has convicted the appellant holding that on the date of incident the prosecutrix was less than 18 years of age and that the appellant abducted her from the lawful custody of her mother with an intention to compel her to marry him.

5. Learned counsel for the appellant submits that the prosecution has failed to prove the age of the prosecutrix by leading cogent evidence as the school examination certificate has not been duly proved and thus the Court below has committed an illegality by relying upon the evidence of P.W.3, the mother of the prosecutrix in holding the prosecutrix to be less than 18 years of age.

6. On the other hand learned counsel for the State supports the impugned judgment.

7. The incident is of 10.00 a.m. on 24.08.92.The mother of the prosecutrix lodged FIR on the same day at about 11.30 a.m. (P-4) whereupon prosecutrix was recovered from the custody of the appellant at 12.00 noon on the same day by the police as per Ex.P.1. The statement of the prosecutrix is duly supported by recovery memo P.1 and the statement of P.W.3, the mother of the prosecutrix as also from the promptly lodged FIR P-4.

(28)

8. Thus from the above evidence it is established that on the date of incident the appellant dragged the prosecutrix and took her to his home on 24.08.92 who was subsequently recovered from his house at 12.00 noon by the police. The prosecutrix was taken by the appellant against her wishes and without permission of her lawful guardians.

9. The second question to be decided in this case is the age of the prosecutrix.

10. The Court below relying on the evidence of the mother of the prosecutrix Gendi Bai who has stated that at the time of giving statement, age of the prosecutrix was between 21 to 22 years and thus considering this fact that the incident took place 5-6 years prior to the date of recording of evidence, the Court below has held the age of the prosecutrix is less than 18 years on the date of incident. There is no cross examination on this point on behalf of the prosecutrix and the statement of the mother of the prosecutrix is corroborated by the school certificate P-3 where in her date of birth is shown to be 4.09.~~97~~ 77. On the basis of the above said discussion it is held that so far as the finding of the Court below that the minor prosecutrix was abducted by the appellant from the lawful custody of her mother which is based on the evidence on record and therefore the conviction under Section 363 of the IPC is just and proper. However findings of the Court below that the prosecution has established the charge under Section 366 of the IPC, is not borne out from the evidence on record and the same is accordingly set aside.

11. Thus the appeal is partly allowed. Conviction of the appellant under Section 363 of the IPC is confirmed. However conviction under Section 366 and sentence of RI for seven years is set aside. From the perusal of the record it appears that appellant was in custody from 24.08.92 to 20.05.93 and from 16.03.98 till date. Thus he has already completed the sentence imposed under Section 363 of the IPC and accordingly he is directed to be set at liberty if not required in any other case.

Sd/-
DHIRENDRA MISHRA
Judge